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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/606,203	06/25/2003	Wesley B. Dong	100/16101	4361
21569	7590	12/14/2006	EXAMINER	
CALIPER LIFE SCIENCES, INC.			TURK, NEIL N	
605 FAIRCHILD DRIVE			ART UNIT	
MOUNTAIN VIEW, CA 94043-2234			PAPER NUMBER	

1743

DATE MAILED: 12/14/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/606,203

Applicant(s)

DONG, WESLEY B.

Examiner

Neil Turk

Art Unit

1743

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on September 25<sup>th</sup>, 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 11-14, 16-20 and 27 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 11-14 and 16-20 is/are allowed.
- 6) ☒ Claim(s) 27 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### **Remarks**

This Office Action fully acknowledges applicant's arguments filed on September 26<sup>th</sup>, 2006. Claims 11-14, 16-20, and 27 are pending. Claims 1-10, 15, and 21-26 have been cancelled.

### ***Allowable Subject Matter***

Claims 11-14 and 16-20 are allowed.

The following is an examiner's statement of reasons for allowance: The closest prior art, namely Smith in view of Nawracala does not teach or fairly suggest two multiwell plates of the same general configuration in which the flange of the second multiwell plate extends at least partially into the ridge of the first multiwell plate and contacts the liquid to thereby create a substantial evaporation barrier.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the

Art Unit: 1743

invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148

USPQ 459 (1966), that are applied for establishing a background for determining

obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

**Claim 27** is rejected under 35 U.S.C. 103(a) as being unpatentable over Smith (5,587,321) in view of Nawracala (6,018,388)

Smith discloses a moated tissue culture plate. Smith discloses that a culture plate having circular culture wells includes a moat surrounding the cluster of wells and the moat including a head space therebetween (abstract). Smith also discloses that when the moat is filled with water or buffer solution, the moat maintains temperature uniformity among the wells and maintains humidity in the head space therebetween, preventing non-uniform evaporation from the wells and reducing evaporation overall (abstract, col. 2, fig. 1). Smith also discloses that apparatus 10 includes a base 12 and a cover 14; base 12 includes a plurality of tubular wells 16 and chamber 18, defined by top wall 20, side walls 22, base wall 24 and bottom well wall 26 (lines 10-15, col. 2, fig. 1-4). Smith also discloses that bottom well wall 26 functions as a common wall for enclosing well bottoms 34 (lines 20-22, col. 2). Smith also discloses that top wall 20 surrounds the cluster of wells 16 and presents an upstanding closure ridge 38 for engaging cover 14 (lines 23-25, col. 2, fig. 1-4). Smith also discloses that side walls 22

Art Unit: 1743

are configured to present surrounding shelf 42 with base extension 44 (lines 27-29, col. 2). Smith also discloses that a plurality of liquid dampening baffles 46 couple with inner surfaces of side walls 22, and there is a gap 48 between the bottom of each baffle and base wall 24 for allowing liquid to flow therethrough, and baffles 46 serve to strengthen the overall structural integrity of base 12 (lines 30-34, col. 2). Smith also discloses that cover 14 includes a top panel 50 and downwardly extending, side panels 52, and the lower face of top panel 50 includes a guide ridge 54 configured to receive closure ridge 38 in registration therebetween when cover 14 is placed on base 12 (lines 35-40, col. 2). Smith further discloses that a solution such as water, buffer or other liquid is then placed in chamber 18, and the solution flows through chamber 18 by way of gaps 48 around the periphery of the wells and also under the bottom well wall 26 (lines 50-55, col. 2). Smith also discloses that base wall 24 is removable in an embodiment so that base 12 can be placed in a plate reader (lines 58-60, col. 2).

Smith does not disclose a second multiwell plate of the same general configuration as the first multiwell plate stacked on top of the first multiwell plate.

Nawracala discloses a microtiter plate and a stacked microtiter plate arrangement as shown in figure 4. Nawracala discloses that in the stacked arrangement, the underside of the bottom plate is prevented (lines 23-35, col. 5, fig. 4).

It would have been obvious to one of ordinary skill in the art to modify the Smith device to stack a second multiwell plate of the same general configuration onto the first multiwell plate such as taught by Nawracala in order to provide protection from damage to the bottom plate of the stack.

***Response to Arguments***

Applicant's arguments, see Remarks, filed September 26<sup>th</sup>, 2006, with respect to **claims 11-14 and 16-20** have been fully considered and are persuasive. The rejections of claims 11-14 and 16-20 has been withdrawn.

Applicant's arguments with respect to **claim 27** have been considered but are moot in view of the new ground(s) of rejection as necessitated by applicant's amendments to the claims.

***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

Art Unit: 1743

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Neil Turk whose telephone number is 571-272-8914. The examiner can normally be reached on M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jill Warden can be reached on 571-272-1267. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 1743

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

NT

  
Jill Warden  
Supervisory Patent Examiner  
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